

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1492

Introduced by Senator Dunn

February 19, 2004

An act to add Chapter 6.5 (commencing with Section 1112) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1492, as amended, Dunn. Employment: confidential information.

Existing law provides for the protection of specified types of personal information and, by executive order of the Governor, establishes the Office of Homeland Security.

This bill would prohibit the performance of any work involving information that is private with respect to Californians or essential to California's homeland security at a worksite outside of the United States, *except with respect to specified transactions*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.5 (commencing with Section 1112) is
2 added to Part 3 of Division 2 of the Labor Code, to read:
3

CHAPTER 6.5. CONFIDENTIAL INFORMATION

1112. (a) The Legislature finds and declares all of the following:

(1) The California Constitution and California statutes protect the privacy of Californians from unwarranted intrusions into their private and personal lives.

(2) Identity theft is the fastest growing white collar crime in the country, and California has the second highest number of reports of identity theft in the entire country.

(3) Increasingly, medical files, tax records, bank and financial data, X-rays, legal documents containing attorney-client privileged information, social security numbers, credit information, and other private information is being outsourced to be processed and analyzed by workers overseas.

(4) Despite California's important constitutional and statutory privacy protections, these laws provide only partial protection to Californians against law breakers who violate their privacy rights in another country. While Californians can enforce privacy laws and seek damages from the person or entity in the United States to whom they have entrusted their private information, California courts have no jurisdiction in other countries, and therefore no ability to protect a Californian's records or enjoin illegal behavior occurring offshore.

(5) Since September 11, 2001, there has been increased attention to safeguarding California's physical and information infrastructure: its roads, bridges, buildings, electric grid, dams, and monuments.

(6) The federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (U.S.A. PATRIOT Act; P.L. 107-56) provides grants to states to secure its infrastructure from terrorist acts.

(7) Information about California's physical infrastructure, which is information essential to homeland security, is being outsourced to be processed and analyzed by workers overseas.

(b) It is the intent of the Legislature in enacting this chapter that work involving Californians' private information and information essential to protecting California from terrorist acts be performed within the United States.

1113. ~~No~~ Except as provided in Section 1114.5, no work involving information that is private or essential to homeland security shall be performed at a worksite outside of the United States.

1114. For purposes of this chapter:

(a) (1) Private information includes all of the following:

(A) Any individually identifiable health information.

(B) Any personally identifiable financial information.

(C) Any confidential communication between client and lawyer.

(D) Any information obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing those returns, including, but not limited to, any instance in which this information is obtained through an electronic medium.

(E) Any personally identifiable information, including, but not limited to, all of the following:

(i) Social security number.

(ii) Driver's license number.

(iii) Credit report.

(iv) Information provided by a consumer on an application to obtain a loan, credit card, or other service.

(2) Private information does not include publicly available information for which there is a reasonable basis to believe the information is lawfully made available to the general public from any of the following:

(A) Federal, state, or local government records.

(B) Widely distributed media.

(C) Disclosures to the general public that are required to be made by federal, state, or local law.

(b) Information essential to homeland security means both of the following:

(1) Information necessary to enhance the capability of state and local jurisdictions to prepare for and respond to terrorist acts, including, but not limited to, events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices.

(2) Information relating to physical and information infrastructures, including, but not limited to, telecommunications, energy, financial services, water, and transportation sectors.

1 (c) “Individually identifiable health information” has the
2 same meaning as in the federal Health Insurance Portability and
3 Accountability Act of 1996 (P.L. 104-191).

4 (d) “Personally identifiable financial information” has the
5 same meaning as in subdivision (b) of Section 4052 of the
6 Financial Code.

7 (e) “Confidential communication between client and lawyer”
8 has the same meaning as in Section 952 of the Evidence Code.

9 (f) “Tax return” has the same meaning as in subdivision (b) of
10 Section 22251 of the Business and Professions Code.

11 *1114.5. (a) Section 1113 shall not apply to private*
12 *information regarding a consumer that is necessary for the*
13 *conduct of either of the following:*

14 *(1) Any transaction initiated by the consumer.*

15 *(2) Any transaction the consumer opts to have performed at a*
16 *worksite outside of the United States.*

17 *(b) Any exemption pursuant to subdivision (a) is limited to the*
18 *immediate transaction and the information that is essential to that*
19 *transaction. Each subsequent transaction must independently*
20 *qualify for exemption.*

